

AUG 18 2008

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6006

DATE COMPLAINT FILED: May 1, 2008

LAST RESPONSE RECEIVED: June 27, 2008

DATE ACTIVATED: June 26, 2008

EXPIRATION OF STATUTE OF LIMITATIONS:
April 21, 2013 .

COMPLAINANT:

Steve Robertson, Chairman, Republican Party of
Kentucky

RESPONDENTS:

Friends of Bruce Lunsford and Karen
Sensenbrenner, in her official capacity as treasurer
Bruce Lunsford

**RELEVANT STATUTE
AND REGULATION:**

2 U.S.C. § 441d(d)(1)
11 C.F.R. § 110.11(c)(3)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint in this matter alleges that Bruce Lunsford, a Kentucky Democratic primary candidate for U.S. Senate, and his campaign committee, Friends of Bruce Lunsford and Karen Sensenbrenner, in her official capacity as treasurer (the "Committee"), failed to include a proper disclaimer on a paid broadcast. Specifically, the Committee paid for additional time to extend an interview of Lunsford on a morning television show, and Lunsford did not make an oral statement identifying him and announcing that he approved the broadcast, and that a similar statement did not appear in writing for at least four seconds at the end of the broadcast. As set

1 forth in more detail below, we recommend that the Commission dismiss the complaint and close
2 the file.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Factual Summary**

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6 On April 21, 2008, Bruce Lunsford appeared on "Louisville Live this Morning," a
7 weekday television program broadcast in the Louisville, Kentucky area on the CW network
8 affiliate, WBKI-TV (the "broadcast"). A representative from WBKI-TV had previously invited
9 Lunsford to appear on the program, noting that it would feature "the incumbents, the candidates
10 running against them, and the important issues the public needs to know about." The invitation
11 further stated that "[e]ach guest will receive a four minute segment to discuss the issues and
12 where they stand," and "[t]he interviewer will give each candidate a chance to state their views
13 and how they will be able to help the community." The station told the Committee that it had
14 extended this offer to all Democratic primary candidates running in the May 20, 2008 primary
15 election. While the invitation stated that the cost of appearing on the show was \$200, the
16 Committee later called the station and found out that the first four minutes would be free, but if
17 the candidate wanted an extended segment it would cost \$200. The Committee acknowledges in
18 its response to the complaint that it paid the \$200 for the extended segment. Lunsford was the
19 only candidate on the April 21, 2008 edition of the program, and the available information does
20 not identify any other candidates who accepted the interview offer and appeared on the program
21 on other dates; the complaint states that one of the other candidates, Greg Fischer, did not accept
22 the offer.

23 According to a DVD of the broadcast attached to the complaint, the extended segment
24 was three minutes long, and both the regular and extended segments consisted entirely of an

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1 interview format in which the host of the show asked Lunsford questions. The broadcast was
2 live and unscripted, although the Committee provided a list of suggested questions to be asked of
3 Lunsford during the interview. While the Committee claims that the show's host "ignored" the
4 questions, the substance of most of the questions was covered during the interview. According
5 to the Committee, neither it nor Lunsford had editorial control or control over the questions
6 actually asked, the setting, or the timing of the broadcast.

7 Throughout the broadcast segment, the bottom of the screen alternated from displaying
8 the Committee's telephone number and website to Lunsford's name and the title "Democratic
9 U. S. Senate candidate." Near the end of the broadcast, the Committee's mailing address,
10 telephone number and website appeared in a full-screen display. The host of the program
11 concluded the interview segment with the following statement:

12 Just to let you know, we are an entertainment show, not necessarily a newscast,
13 and the Lunsford for Senate campaign today paid for the extended segment to be
14 able to discuss the important issues beyond the 30-second commercial or 10-
15 second sound bite, and the same opportunity has been made available to all
16 candidates in the Kentucky primary.

17
18 **B. Analysis**

19 Under the Federal Election Campaign Act of 1971, as amended, television
20 communications paid for or authorized by a candidate, an authorized political committee of a
21 candidate, or its agents, must include, *inter alia*, an oral statement or voiceover that identifies the
22 candidate and states he has approved the communication, and in which the candidate appears on-
23 camera making the statement or his photograph appears during the statement (a so-called "stand-
24 by-your-ad" disclaimer). 2 U.S.C. § 441d(d)(1)(B)(i); 11 C.F.R. § 110.11(c)(3)(ii).
25 Additionally, the "stand-by-your-ad" requirements specify that the text of the statement must

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1 appear on the screen for at least four seconds in an easily readable manner with a reasonable
2 color contrast. 2 U.S.C. § 441d(d)(1)(B)(ii); 11 C.F.R. § 110.11(c)(3)(iii).

3 In its response to the complaint, the Committee disputes the allegation that a disclaimer
4 was required, stating that it was impracticable to comply with the "stand-by-your-ad"
5 requirements because it did not have control of the broadcast and there was no place to run a
6 written disclaimer because the interview was part of a live half hour program. The Committee
7 states the interview was continuous from the nonpaid to the paid segments and, therefore, it
8 would have been impracticable to provide a disclaimer for half of an interview. The Committee
9 also states Lunsford substantially complied with any applicable disclaimer requirements because
10 he appeared live and responded to the host's questions, thereby approving all of his remarks.
11 Further, it argues that there was no need to say he approved the contents of the broadcast because
12 they were his own statements. Finally, the Committee argues that this matter should be
13 dismissed because the \$200 charge represents a *de minimus* amount.¹

14 This is a matter of first impression concerning the applicability of the "stand-by-your-ad"
15 requirements to live, unscripted and unedited interviews paid for by candidates or political
16 committees instead of a pre-recorded advertisement. Moreover, it involves a live interview
17 within a television program that combines elements of news, local interest and entertainment but
18 does not clearly fit into one of those separate categories, with the Committee paying for only a
19 portion of the interview. The interview ran for approximately seven minutes of the half-hour

¹ The Committee also maintains that the complaint should be dismissed because the broadcast is exempt from the disclaimer requirements since it falls under the media exemption for expenditures and electioneering communications. See 2 U.S.C. § 431(9)(B). However, the media exemption only applies to media organizations and, since there is no allegation against the television station, the Commission need not address this issue. See *Internet Communications*, 71 Fed. Reg. 18589, 18607 (April 12, 2006) (citing the legislative history of the statute in stating that "the 'media exemption' recognizes 'the unfettered right of the newspapers, television networks, and other media to cover and comment on political campaigns.'" (Emphasis in original)).

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1 regularly scheduled television show, and the paid segment consisted of less than half of the
2 interview.

3 The purpose of the "stand-by-your-ad" requirements is to "hold candidates personally
4 responsible and accountable for their advertisements." See MUR 5432 (Summers-O'Neal)
5 Statement of Reasons of Vice Chairman Toner and Commissioners McDonald and Weintraub
6 (citing Sen. Wyden, Cong. Record, S2174, Mar. 20, 2002). Neither the legislative history nor the
7 Explanation and Justification published in the Federal Register mention or address the issue of a
8 live broadcast.² See Disclaimers, *et. al.*, 67 Fed. Reg. 76962 (Dec. 13, 2002). When the statute
9 and subsequent regulation were drafted, it is likely that the issue of a candidate appearing on a
10 live unscripted interview was not contemplated since a statement of approval would be
11 superfluous, and the absence of a "stand-by-your-ad" statement would not result in any
12 diminishment of candidate accountability for what was said. While there was neither a written
13 nor an oral "stand-by-your-ad" disclaimer by the candidate in this case, Lunsford, who
14 spontaneously answered questions during the entire live broadcast, in effect approved of and took
15 responsibility for his answers. Thus, Lunsford's appearance on the television program in
16 question effectively satisfied the spirit of the "stand-by-your-ad" requirements, if not the
17 requirements themselves.

18 Based on the very limited circumstances of this case, we believe that it is more
19 appropriate to recommend that the Commission dismiss this matter rather than make a no reason

² In AO 2004-1 (Bush/Forgy Kerr), the Commission, addressing another "stand-by-your-ad" disclaimer issue that apparently had not been contemplated when the statute was drafted, did not require both candidates featured in one advertisement to each make a separate oral "stand-by-your-ad" disclaimer, but instead allowed one candidate to make the statement for both, because the statute did not "anticipate multiple candidates."

1 to believe finding. In this matter, the Committee paid a small amount for an extension of an
2 interview on a mid-morning television program. _____

3 _____
4 _____ The Commission
5 may want to address whether the "stand-by-your-ad" requirements apply to a live interview paid
6 for by a candidate or committee in the future, but such an analysis may not be appropriate in a
7 case presenting these very limited circumstances.

8 This case should also be dismissed based on the *de minimus* amount in violation. _____
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18 **III. RECOMMENDATIONS**

- 19 1. Dismiss the complaint;
20 2. Approve the appropriate letters; and
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3. Close the file.

Thomasenia P. Duncan
General Counsel

8/18/08
Date

BY:


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